Legislative Department
Seattle City Council
Memorandum

Date: October 25, 2013

To: Richard Conlin, Chair
Tim Burgess, Vice Chair
Mike O'Brien, Member
Planning, Land Use and Sustainability Committee (PLUS)

From: Eric McConaghy, Council Central Staff

Subject: **Clerks' File (CF) 311081** Application of Katy Chaney to prepare a new Major Institution Master Plan for the Virginia Mason Medical Center campus, located at 1100 9th Avenue (Project No. 3011669, Type IV)

Description of Application:
Virginia Mason Medical Center (VM) seeks approval of a new Major Institution Master Plan (MIMP) and rezones to expand the boundary of the related Major Institutional Overlay (MIO) boundary and to correct a mapping error.

VM has developed a new MIMP to guide its future growth. If City Council approves the MIMP, it would authorize future development through the adoption of plans, use requirements and development standards applicable to property VM owns within its MIO zone. The MIO is also established by Council, designating the area in which the MIMP applies.

City Council Review
Council review of a proposed MIMP is a Type IV land use decision under the City's Land Use Code. As such, it is a quasi-judicial decision that is subject to state and local laws restricting the manner in which such decisions are made. These restrictions are summarized in the memo to the PLUS Committee dated September 23, 2013.

A PLUS recommendation to approve a MIMP and rezone for the MIO with height limits specified, subject to the conditions contained in Council's Findings, Conclusions and Decision (FCD), allows the Full Council to take action.

The PLUS Committee posed several questions about the recommended housing replacement conditions in the proposed MIMP at its October 2, 2013 meeting. I have provided responses to the questions below. Once the Committee has provided guidance on this issue, I can draft the FCD if directed, and prepare the legislative package for introduction and referral.

Proposed Housing Replacement Conditions

As part of the new master plan, VM is proposing a rezone to expand the Overlay boundaries to include the 1000 Madison block. The MIMP calls for demolition of the Chasselton Court Apartments (the Chasselton) and a small garage structure on this block to allow hospital expansion.

The Chasselton is an 85-year-old, unreinforced masonry structure that has an assessed valuation of $2.6 million. The building has not been upgraded to meet current seismic or construction code standards. A 2009 seismic evaluation concluded that the building has substantial deficiencies and that structurally upgrading it would cost between $7.5 and $12.5 million. The 55 studio and seven one-bedroom apartments in the Chasselton are rented at market rates. However, as noted in the Final Environmental Impact Statement, they are considered affordable for those earning between 50 and 76 percent of the median income, and would be considered affordable to "low income" households under established federal guidelines for the area.

MIO rezones are prohibited if a rezone results in either 1) a residential use changing to a non-residential Major Institution use or 2) the demolition of housing, unless "comparable replacement" is proposed to maintain the "housing stock of the city". VM proposes to provide comparable replacement housing, and has agreed to replacement housing conditions recommended by the Director of the Department of Planning and Development (DPD).

The replacement housing conditions recommended by the Hearing Examiner are nearly identical to those of the DPD Director. A brief discussion of the differences was included in the memorandum to the PLUS Committee dated September 23, 2013 (pages 13 and 14). I have attached the housing replacement conditions as recommended by the Hearing Examiner for reference (Attachment A).

The conditions recommended by the Hearing Examiner provide two options for replacing the housing: 1) a performance or build option; and 2) a payment option. For the build option there are requirements for the number, size, type, quality and location of the replacement housing units, but not for the payment option. In addition, the recommended conditions require a review of replacement housing proposals by the Standing Advisory Committee (SAC). VM is encouraged to provide some of the units as affordable housing, but this is not a requirement.

Committee Questions about Housing Replacement Conditions

The PLUS Committee's questions generally asked about the extent of the Council's discretion to revise the conditions recommended by the Hearing Examiner, and whether there is any case law regarding the definition of "comparable replacement" housing that would inform the current deliberations.

The Law Department is not aware of any relevant case law. The "comparable replacement" language is particular to Seattle's Land Use Code, so definitions used in other statutory contexts do not have direct application.

Council has discretion to require different conditions on the MIMP than those recommended by the Hearing Examiner. However, it does matter how DPD, the Hearing Examiner, and Council have applied that condition to other major institutions. If the Council now wants to

depart from past practices, it would need to articulate a rational basis for taking a different approach. For reference, Attachment B summarizes the housing replacement conditions placed on MIMPs over the past 13 years.

1. Build option—At what point may VM demolish the Chasselton Apartments?
PLUS asked whether the Council could require that VM do more than apply for a building permit for the replacement housing before the Chasselton is demolished.

The Council does have this option. The following two actions could be cited as the trigger for allowing demolition: 1) issuance of a building permit; or 2) physical replacement of the units, as evidenced by issuance of a Certificate of Occupancy. In 2000, for the Harborview Hospital MIMP, the Council required that the replacement housing be built first. Note however that DPD later waived this requirement as a minor amendment to the Harborview Master Plan.

The following wording would set a stronger trigger for satisfying the build option condition:

> Before Virginia Mason may receive a permit to demolish the Chasselton or change the use of the Chasselton to a non-residential major institution use, DPD must find that Virginia Mason constructed or caused to be constructed comparable housing to replace the housing in the Chasselton.

2. Build option—Credit for replacement
PLUS inquired how to prevent Virginia Mason (VM) from receiving replacement credit for a project that was otherwise going to occur regardless of VM's participation.

The Hearing Examiner recommendation now states that "projects that were the subject of a MUP application submitted to DPD prior to Council approval of the MIMP" would not satisfy VM's obligation to replace the housing, and neither would "minor involvement by Virginia Mason in the housing project, such as merely adding Virginia Mason's name to a permit application for a housing project".

To strengthen this condition, Council could specify that VM could not meet the replacement requirement with involvement in a project that would be built regardless of VM's participation. The wording below would impose a broader condition would place the burden of proof on VM to show that its participation is the reason that the replacement housing project is being constructed:

> VM does not meet the replacement requirement by participation in a project that would be built regardless of VM's participation, as determined in their sole discretion by the Office of Housing and the Department of Planning and Development.

3. Payment option questions
PLUS also inquired about the how far Council's discretion extends in the consideration of comparable replacement housing. For example, could Council require that VM pay 100% of the replacement cost instead of 35% under the pay option?

The Council may require more than the facilitation of the provision of replacement housing (35%). However, previous MIMP that provided a payment options have used 35% of costs as a baseline, so Council would have to provide the rationale for changing the policy. The percentage of the replacement costs specified, 35%, represents VM replacing the City's usual stake in an affordable housing project. There may be a reason to allow this percentage to be adjusted because the City's stake may not remain constant through time. The wording in the second paragraph below articulates this idea for the payment option:

> Virginia Mason elects either 1) within two years of MIMP approval, to pay the City of Seattle $4,460,000 to help fund the construction of comparable replacement housing; or 2) more than two years after final MIMP approval, to pay the City of Seattle at least 35% of the estimated cost of constructing the comparable replacement housing.
>
> If more than two years after the final MIMP approval the City's typical percentage in financing affordable housing is greater than 35%, then this greater percentage shall be used to calculate Virginia Mason's payment to help fund construction of replacement housing.
>
> The estimated cost shall be determined by DPD and the Office of Housing based on at least two development pro formas prepared by an individual(s) with demonstrated expertise in real estate financing or development. The determination of the estimated cost by DPD and the Office of Housing is final and not subject to appeal.
>
> Payment to the City under this option b shall be used to finance the construction of comparable replacement housing, and shall be subject to the provisions of the City's Consolidated Plan for Housing and Community Development and the City's Housing Levy Administrative and Financial Plan in existence at the time the City assists in financing the replacement housing.

Another approach would be to eliminate the payment option altogether, thus requiring VM to cause the replacement housing to be built. This requirement has already been imposed in the Harborview Hospital and Seattle University MIMPs, which do not have a payment option.

4. Requiring affordable replacement housing

PLUS wanted to know whether Council could condition the rezone for the MIO to require that the replacement housing be affordable to persons with the same percentage of median income as the residents of the Chasselton.

State law generally prohibits local government from imposing rent control on "residential rental structures or sites other than properties in public ownership, under public management, or properties providing low-income rental housing under joint public-private agreements for the financing or provision of such low-income rental housing."[1] So, for MIMPs, the only direct way the City can assure comparable affordability is if the applicant wants to obtain

[1] Revised Code of Washington (RCW) 35.21.830

money from the City for the replacement project and if affordability is a condition of such grants.

If Council wants to modify the Seattle Municipal Code to provide a means to obtain replacement housing that is comparable with respect to affordability, then Council could do so if the code is revised to provide incentives for affordability, rather than requirements.

5. Additional Considerations

I have three additional considerations to bring to the attention of PLUS. Two have to do with the physical specifications of the replacement housing required by the conditions. The third deals with who submits proposals for housing replacement to the SAC.

Same specifications for replacement housing for both options

I have found that conditions of previous MIMPs that allowed for either a build option or a pay option required the same physical specifications of replacement housing for both options. The Hearing Examiner's recommended condition for VM lists several specifications for the build option, but only a general statement for the payment option. I recommend that the conditions for the VM MIMP should be clear that the same physical specifications apply to both options.

Minor edits to specifications for replacement housing

I also recommend minor edits to the list of physical specifications so that the number of each type of unit to be replaced is explicit; the required size of the units is clear; and the required location of the replacement units is well-defined as the "greater First Hill neighborhood". The list below contains these edits, with new wording underlined and deleted wording ~~crossed-out~~; the list would appear in two sections of the conditions: revisions to MIMP text and conditions for the rezone.

> For the purposes of satisfying either the option a or option b, the comparable replacement housing must meet the following requirements:
>
> - Provide a minimum number of units equal to the number of units in the Chasselton Court apartments (62 units);
> - Provide no fewer than seven one-bedroom units and ~~no units smaller than the size of the studio units in the Chasselton Court apartments~~ no fewer than 55 studio units;
> - Provide no units smaller than the average size of the studio units in the Chasselton Court apartments;
> - Include a minimum of 31,868 net rentable square feet, equivalent to that in the Chasselton Court apartments;
> - Be of a construction quality equal to or greater than that in the Chasselton Court apartment units; and
> - Be located within the greater First Hill neighborhood, defined as the area between Interstate Highway 5 on the west, Pike Street on the north, 12th Avenue and Boren Avenue on the east, and the south boundary of Yesler Terrace on the south.

Review by the Standing Advisory Committee
The Hearing Examiner's recommended condition states that "the Office of Housing and/or Virginia Mason" shall submit all proposals to the SAC for review. I recommend changing this condition to make DPD responsible for submitting proposals for replacement housing to the SAC for review and comment. In the Hearing's Examiner's recommendations, DPD is identified as the party responsible for finding whether or not Virginia Mason has satisfied the conditions allowing for the demolition of housing (the Chasselton). The following language is consistent with DPD's role:

> All proposals for replacement housing shall be submitted by the Department of Planning and Development for review and comment by the Standing Advisory Committee. At the discretion of the City, the submittal may exclude financing details and related information.

Next Steps

The PLUS meeting October 30, 2013 has been reserved for briefing and discussion of the housing replacement conditions on the MIMP. After the discussion of options, I will ask PLUS for direction on the FCD. PLUS has not identified any other outstanding issues, besides the housing conditions, regarding the proposed MIMP and rezone.

With PLUS' permission, I will prepare a bill for the Virginia Mason MIMP and rezone, with the FCD, for introduction and referral by the Full Council. The Master Plan and rezone for the MIO will be subject to the conditions contained in the FCD.

At the November 22, 2013 meeting of the PLUS Committee, the Committee may question parties of record in this matter regarding changes to the housing replacement conditions.

Attachments

Attachment A: Hearing Examiner Recommended Housing Replacement Conditions

Attachment B: Housing replacement conditions of Major Institution Master Plans

ATTACHMENT A: Hearing Examiner Recommended Housing Replacement Conditions

…

Revisions to MIMP Text

…

23. On page 79, the second sentence of the last paragraph in the description of the Chasselton Court Apartments shall be corrected as follows: "The majority of the apartments are studio apartments (55 units) with ~~six~~ seven one-bedroom apartments.*"(Hearing Examiner's strike-through)*

24. On page 80, Virginia Mason's housing replacement proposal shall be replaced with the following:

Virginia Mason's housing replacement proposal shall:

> i. Provide a minimum number of units equal to the number of units in the Chasselton Court apartments (62 units);
>
> ii. Provide no fewer than seven one-bedroom units and no units smaller than the size of the studio units in the Chasselton Court apartments;
>
> iii. Include a minimum of 31,868 net rentable square feet, equivalent to that in the Chasselton Court apartments;
>
> iv. Be of a construction quality equal to or greater than that in the Chasselton Court apartment units; and
>
> v. Be located within the First Hill neighborhood.

…

Recommended Conditions – Rezone

…

30. Before Virginia Mason may receive a permit to demolish the Chasselton or change the use of the Chasselton to a non-residential major institution use, DPD must find that Virginia Mason has performed either of the following two options:

> a) Virginia Mason has submitted or caused to be submitted a building permit application or applications for the construction of comparable housing to replace the housing in the Chasselton. The building permit application(s) for the replacement housing project(s) may not include projects that were the subject of a MUP application submitted to DPD prior to

Council approval of the MIMP. Minor involvement by Virginia Mason in the housing project, such as merely adding Virginia Mason's name to a permit application for a housing project, does not satisfy Virginia Mason's obligation under this option. All such replacement housing shall be located within the greater First Hill Neighborhood. This is the area outlined in a broken black line on Figure 1 at page four of the MIMP, and is defined as the area between I-5 on the west, Pike Street on the north, 12th Avenue and Boren Avenue on the east, and the south boundary of Yesler Terrace on the south.

b) Virginia Mason elects either 1) within two years of MIMP approval, to pay the City of Seattle $4,460,000 to help fund the construction of comparable replacement housing; or 2) more than two years after final MIMP approval, to pay the City of Seattle 35% of the estimated cost of constructing the comparable replacement housing. The estimated cost shall be determined by DPD and the Office of Housing based on at least two development pro formas prepared by an individual(s) with demonstrated expertise in real estate financing or development. The determination of the estimated cost by DPD and the Office of Housing is final and not subject to appeal. Payment to the City under this option b shall be used to finance the construction of comparable replacement housing, and shall be subject to the provisions of the City's Consolidated Plan for Housing and Community Development and the City's Housing Levy Administrative and Financial Plan in existence at the time the City assists in financing the replacement housing.

For purposes of performance option a, the replacement housing must:

- Provide a minimum number of units equal to the number of units in the Chasselton Court apartments (62 units);
- Provide no fewer than seven one-bedroom units and no units smaller than the size of the studio units in the Chasselton Court apartments;
- Include a minimum of 31,868 net rentable square feet, equivalent to that in the Chasselton Court apartments;
- Be of a construction quality equal to or greater than that in the Chasselton Court apartment units; and
- Be located within the First Hill neighborhood.

<u>If Virginia Mason chooses performance option a, it is encouraged to</u>: (1) contribute to the housing replacement project in a manner that will assure that at least 10% of the units (i.e., a number equal to 10% of the demolished units, or a total of 7 units) will be rented for at least 10 years at rates affordable to persons earning less than 80% of the median area income; and (2) utilize a design that allows the project to compete effectively for public and private affordable housing grants and loans. This design provision is not intended to discourage creative solutions, such as siting affordable units in high-rise buildings otherwise containing market rate housing. Virginia Mason may not receive credit in fulfillment of the housing replacement requirement for any portion of the housing replacement cost that is financed by City funds. However, any City

funds spent in excess of construction costs to provide affordability in what would otherwise be market-rate replacement units (i.e., to "buy down" rents in the completed building), shall not disqualify units as replacement housing under this condition.

If Virginia Mason chooses performance option b, the Office of Housing shall devote all funds provided by Virginia Mason to a project or projects within the greater First Hill Neighborhood. This is the area outlined in a broken black line on Figure 1 at page four of the MIMP, and is defined as the area between I-5 on the west, Pike Street on the north, 12th Avenue and Boren Avenue on the east and the south boundary of Yesler Terrace on the south. All proposals for replacement housing shall be submitted by the Office of Housing and/or Virginia Mason for review and comment by the SAC. At the discretion of the City, the submittal may exclude financing details and related information.

ATTACHMENT B: Housing replacement conditions of Major Institution Master Plans

MIMP	housing demolished	build option	pay option	performance
Providence Medical Center[1] July 1994	2 duplexes,4 units; potential 2 single-family houses	none	none	none
Harborview (King County) August 2000	64 units market-rate and subsidized affordable rental	replacement of all units before demolition up to 50% more in tenant relocation assistance above required	none	# of units same size of units same affordability same area available for 10 years
Swedish First Hill October 2005	none	none	none	none
Seattle Children's Hospital April 2010	136 condominiums; market-rate; owner-occupied	submit an application for MUP before demolition No housing replacement credit for cost that is financed by City funds	$10.9 million or 35% of replacement cost	# of units same type/mix same square feet same quality same area
Seattle University January 2013	none at time of MIMP approval	submit an application for MUP before demolition No housing replacement credit for cost that is financed by City funds	none	# of units same type/mix same square feet same quality same area
Virginia Mason proposed	62 apartments; market-rate; rental	submit an application for building permit before demolition Encouraged: 10% of the units affordable to persons earning 80% median income for at least ten years Design to compete effectively for public and private affordable housing grants and loans. No replacement credit for any portion of the replacement cost financed by City funds.	$4.46 million or 35% of replacement cost	for build option: # of units same type/mix same square feet same quality same area for pay option: "comparable" and same area

[1] Swedish purchased its Cherry Hill campus from the Sisters of Providence in 2000. New MIMP underway.